REMARKS

Claims 1-14, and 16-19 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Otsubo et al. (US Patent Publication No. 2002/0151864). This ground of rejection is respectfully traversed.

The Examiner states that Otsubo et al. describes a disposable absorbent garment having a front waist portion **11**, a belly portion **2**, a rear waist portion **12**, a rear back portion **3**, a crotch portion **4**, and leg openings **41**. The leg openings **41** are described as having a high-cut concave edge portion **42** in the front, and a convex edge portion in the rear, referring to FIG. 4 of the reference for clarity. ApplicantS respectfully disagree with this interpretation of the reference, and therefore maintain that Otsubo et al. would neither anticipate nor render obvious the present invention.

In order for a claim to be anticipated by a reference, that reference must disclose each and every element of the claimed invention. See *Verdegaal Bros. v. Union Oil Co. of California,* 814 F.2d 628, 631 (Fed. Cir. 1987) ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."); see also *Richardson v. Suzuki Motor Co.,* 868 F.2d 1226, 1236 (Fed. Cir. 1989) ("The identical invention must be shown in as complete detail as is contained in the . . . claim.").

The disposable garment of the present invention has been specifically designed to ergonomically accommodate the portion of the wearer's leg that merges with his or her torso. This provides for comfortable seating while at the same time allowing for a tight seal to preclude the egress of liquid from the leg opening. See page 16, lines 8-15 of the present specification.

This result is accomplished by designing the leg openings so that the front section of the garment is high cut with an arcuate (bow or S-shaped) concave edge section, and a rear section with a complementary arcuate convex edge section. The claims have now been amended in order to clarify and highlight this feature of the invention. Applicant respectfully submits that the reference does not disclose these features.

The corresponding lower edge portion of the Otsubo et al. garment **13** is a straight section, and not concaved or arcuate (bowed) as claimed in the present claims. The

reference does state that the end portion of the edge is convex, but this is the opposite of the claimed concave design. Moreover, there is no evidence that the rear edge of the reference is convex as also required in the present claims. See FIGS. 3 and 4 of Otsubo et al., and compare to FIG. 1 of the present specification. Accordingly, since every element of the claimed invention is not disclosed in a single reference, the claimed absorbent undergarment is not anticipated by Otsubo et al. See *In Continental Can Co. v. Monsanto Co.,* 948 F.2d 1264, 20 U.S.P.Q.2d 1746 (Fed. Cir. 1991).

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being obvious over Otsubo et al. in view of Good et al. (U.S. Patent No. 5,843,056). This ground of rejection is also traversed.

Three criteria must be met to establish a prima facie case of obviousness: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations (MPEP § 2143).

The Good et al. reference has apparently been relied upon for its disclosure of the use of spunbond polypropylene as a suitable nonwoven material for the construction of the top sheet of an absorbent article. Notwithstanding, as discussed above, Otsubo et al. does not disclose an absorbent garment having a high cut arcuate concave front edge section, or an arcuate convex rear edge section as presently claimed. Accordingly, the present invention is structurally different from the Otsubo et al. garment, and any combination of Otsubo et al. and Good et al. would fail to teach or suggest the garment of the present invention.

Claims 1-6 and 14-19 also stand rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 1, 8, 9, 11, 12-20 and 24 of U.S. patent No. 6,607,515.

In order to expedite the prosecution of this application, applicant would be prepared to file a terminal disclaimer in order to obviate this rejection should the application otherwise be in condition for allowance.

Accordingly, the present application is now believed to overcome the remaining rejections, and to be in proper condition for allowance. Reconsideration of the rejections, and allowance of this application, are therefore respectfully solicited. The Examiner is

invited to contact the undersigned at the telephone number listed below to facilitate the prosecution of this application.

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Respectfully submitted

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